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Counsel to the Debtors and
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IN THE UNITED STATES BANKRUPTCY COURT
 FOR THE EASTERN DISTRICT OF VIRGINIA
 RICHMOND DIVISION

- - - - - x
 In re: : Chapter 11
 :
 CIRCUIT CITY STORES, INC., : Case No. 08-35653 (KRH)
et al., :
 :
 Debtors. : Jointly Administered
 - - - - - x

**DEBTORS' SUPPLEMENT TO THE THIRTY-FIRST
 OMNIBUS OBJECTION TO CLAIMS (DISALLOWANCE
 OF CERTAIN LEGAL CLAIMS) WITH RESPECT TO THE
 CLASS CLAIM FILED BY JOSEPH SKAF**

The debtors and debtors in possession in the

above-captioned cases (collectively, the "Debtors")¹, pursuant to sections 105, 502 and 503 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 3007, 7056, 9007 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 56 of the Federal Rules of Civil Procedure (the "Civil Rules"), submit this supplement (the "Supplement") to the Debtors' Thirty-First Omnibus Objection² (as defined herein) (together with the Thirty-First, the "Objection") with respect to the Class Claim (as defined herein) filed by Joseph Skaf ("Skaf"). In support of this Supplement, the Debtors respectfully represent as follows:

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Circuit City Stores, Inc. (3875), Circuit City Stores West Coast, Inc. (0785), InterTAN, Inc. (0875), Ventoux International, Inc. (1838), Circuit City Purchasing Company, LLC (5170), CC Aviation, LLC (0841), CC Distribution Company of Virginia, Inc. (2821), Circuit City Properties, LLC (3353), Kinzer Technology, LLC (2157), Abbott Advertising Agency, Inc. (4659), Patapsco Designs, Inc. (6796), Sky Venture Corp. (0311), PRAHS, INC. (n/a), XSStuff, LLC (9263), Mayland MN, LLC (6116), Courchevel, LLC (n/a), Orbyx Electronics, LLC (3360), and Circuit City Stores PR, LLC (5512). The address for Circuit City Stores West Coast, Inc. is 9250 Sheridan Boulevard, Westminster, Colorado 80031. The address for the Debtors is 4951 Lake Brook Drive, Suite #500, Glen Allen, VA 23060.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Objection.

PRELIMINARY STATEMENT

1. By the Thirty-First Omnibus Objection, the Debtors sought to disallow the Class Claim in its entirety. Contemporaneously herewith, the Debtors filed a motion for summary judgment in support of reclassification of the Class Claim to a pre-petition general unsecured, non-priority claim.

2. By this Supplement, the Debtors seek to disallow the Class Claim to the extent that it seeks relief with respect to any unnamed individuals (each an "Unnamed Claimant" and, collectively, the "Unnamed Claimants") and, consequently, if granted, to reduce the Class Claim to a claim solely asserted by Skaf, Gustavo Garcia ("Garcia"), and Miguel Perez ("Perez" and collectively with Skaf, and Garcia, the "Named Claimants" and such Claimants claim, the "Named Claimants' Claim").³ As set forth above, however, the Debtors are moving for summary judgment with respect to the Named Plaintiffs' Claim asserting that it must, as a matter of law, be reclassified to a general, unsecured,

³ The Debtors do not believe that Garcia or Perez have filed individual proofs of claim. To the extent they have, the Debtors reserve the right to object to such claims as duplicative.

pre-petition claim subject to further objections by the Debtors or their successors on any grounds that governing law permits.

BACKGROUND

3. The Debtors hereby incorporate by reference the Background set forth in the Thirty-First Objection as if fully set forth herein and provide the Court with the following additional background information.

A. The General Bar Date.

4. On November 12, 2008, the Court appointed Kurtzman Carson Consultants LLC ("KCC") as claims, noticing and balloting agent for the Debtors in these chapter 11 cases, pursuant to 28 U.S.C. § 156(c) (D.I. 108).

5. On December 10, 2008, the Court entered that certain Order Pursuant to Bankruptcy Code Sections 105 and 502 and Bankruptcy Rules 2002, 3003(c)(3), and 9007 (I) Setting General Bar Date and Procedures for Filing Proofs of Claim; and (II) Approving Form and Manner of Notice Thereof (D.I. 890) (the "Claims Bar Date Order").

6. Pursuant to the Claims Bar Date Order, the deadline for filing all "claims" (as defined in 11 U.S.C. § 105(5)) arising before November 10, 2008 against the Debtors by any non-governmental entity was 5:00 p.m. (Pacific) on January 30, 2009 (the "General Bar Date").

7. On December 19, 2008, KCC served a copy of the Claims Bar Date Notice (as defined in the Claims Bar Date Order) on, among others, the counsel that represented Gentry (the "Class Counsel") in the pending lawsuit styled as Joseph Skaf et al. v. Circuit City Stores, Inc. (the "Class Action"). In addition, the Debtors published the Claims Bar Date Notice in The Wall Street Journal (D.I. 1395) and The Richmond Times-Dispatch (D.I. 1394).

B. Procedural Background.

8. On January 30, 2009, Class Counsel filed the Class Claim on behalf of the Named Claimants and the Unnamed Claimants, which Unnamed Claimants are alleged "all those similarly situated" to Skaf in the amount of \$95,501,550.00, which Class Claim was asserted as being entitled to priority treatment under 11 U.S.C. §

507(a)(4)(Claim No. 8717, the "Class Claim"). A copy of the Class Claim is attached as Exhibit A.

9. On August 20, 2009, the Debtors filed the Debtors' Thirty-First Omnibus Objection to Claims (Disallowance of Certain Legal Claims) (D.I. 4585; the "Objection"). By the Thirty-First Omnibus Objection, the Debtors seek to disallow certain filed claims, including the Class Claim.

10. Skaf filed a preliminary response to the Thirty-First Omnibus Objection. (D.I. 4946, the "Response"). In the Response, Skaf contends that disallowance of the Class Claim is improper. See Response, p. 2 ("Debtors' Objection, which seeks to disallow the claims of Creditor Skaf and the putative class, is improper.").

11. On October 16, 2009, this Court entered the Order on the Debtors' Thirty-First Omnibus Objection (D.I. 5294; the "Order"), under which the Thirty-First Omnibus Objection was adjourned with respect to the Class Claim.

C. The Class Action Complaint.

12. The Class Claim is premised on the Class Action. A copy of the complaint filed in the Class Action is attached as Exhibit B (the "Class Action Complaint"). The Class Action Complaint was filed in Los Angeles Superior Court in California on December 19, 2008 -- over one month after the Petition Date.⁴ As a result of the Debtors' bankruptcy, the Class Action was stayed. As of the Petition Date, no class had been certified.

13. In the Class Action Complaint, the Named Claimants sought, on behalf of themselves and allegedly on behalf of similarly situated parties, two forms of relief. First, the Named Claimants seeks damages for violations of the California Labor Code and Business and Professions Code. See Skaf Complaint, p. 1. Second, the Named Claimants sought injunctive relief against Circuit City on account of the alleged labor violations. See Skaf Complaint, p. 22.

⁴ Plainly, this is a violation of the automatic stay. The Debtors reserve all of their rights with respect thereto.

D. The Class Claim.

14. By the Class Claim, Skaf asserts that Circuit City violated California labor laws entitling the Named Claimants and the Unnamed Claimants to the payment of overtime wages and waiting time penalties for the period from June, 1998 to January, 2008. See Claim No. 8717 Exhibit A at 1.

15. Specifically, the Class Claim is broken into various parts. First, the Claim seeks \$72,421,440.00 for overtime pay by using the following formula: (hourly rate x 1.5) x (overtime per week) x (work weeks) x (number of class members) (the "Overtime Damages"). The Overtime Damages are divided between the Named Claimants' portion, which totals \$620,755.20 (the "Named Claimants' Overtime Claim"), and the Unnamed Claimants' portion, which allegedly totals \$71,800,684.80 (the "Unnamed Claimants Overtime Claim").

16. Second, the Class Claim includes \$3,979,800.00 for waiting time penalties by using the following formula: (hourly rate) x (hours worked per day) x (30 days) x (number of employees employed at Circuit City) (the "Waiting Time Damages"). The Waiting

Time Damages are also divided between the Named Claimants portion, which allegedly totals \$15,919.20 (the "Named Claimants' Waiting Time Claim"), and the Unnamed Claimants' portion, which allegedly totals \$3,963,880.80 (the "Unnamed Claimants' Waiting Time Claim").

17. Thus, the Named Claimants' Overtime Claim and Waiting Time Claim aggregates to \$636,674.40 (the "Named Claimants' Claim") and the Unnamed Claimants' Overtime Claim and Waiting Time Claims aggregate to \$75,764,565.60 (the "Unnamed Claimants' Claim").

18. Third, and finally, the Class Claim also includes \$19,100,310.00 on account of attorneys' fees, presumably for Class Counsel (the "Attorneys' Fee Claim").

E. The Named Claimants' Employment.

19. As set forth in the Class Claim, Skaf was not employed by Circuit City after May, 2007; Garcia was not employed by Circuit City after June, 2006; and Perez was not employed by Circuit City after January, 2008. Claim No. 8717, Exhibit A at 1.

SUPPLEMENTAL RELIEF REQUESTED

20. Subject to the reservation of rights set forth herein and in addition to seeking to reclassify the Class Claim to a general unsecured, non-priority claim, by the Objection, the Debtors seek to disallow the portions of the Class Claim seeking payment on account of the Unnamed Claimants' Claim and the Attorneys Fee Claim (the "Unnamed Claimants' Class Claims").

BASIS FOR RELIEF

21. Class counsel filed the Class Claim on behalf of the Named Claimants and the Unnamed Claimants as a class proof of claim. Prior to doing so, however, Skaf was not certified as the class representative in the Class Action. Indeed, no class has ever been certified. More importantly, neither Skaf nor Class Counsel has ever sought this Court's approval to file a class proof of claim as required by Bankruptcy Rules 9014 and 7023, and granting any such relief at this time, would be severely prejudicial to the Debtors. Consequently, for this and the further reasons set forth

below, the Unnamed Claimants' Class Claims should be disallowed in their entirety.

APPLICABLE AUTHORITY

I. THE UNNAMED CLAIMANTS' CLASS CLAIMS SHOULD BE DISALLOWED.

A. Skaf Was Required To Seek The Bankruptcy Court's Permission To File A Class Proof Of Claim.⁵

22. Bankruptcy Rule 7023 provides that Civil Rule 23 -- the class action rule -- applies in adversary proceedings. Fed. R. Bankr. P. 7023 ("Rule 23 F.R.Civ.P. applies in adversary proceedings."). Bankruptcy Rule 7023 does not, however, apply to the filing of claims or in contested matters absent leave of court. See Fed. R. Bankr. P. 9014 ("The court may at any stage in a particular matter direct that one or more of the other rules in Part VII shall apply."); see also In re American Reserve Corp., 840 F.2d 487, 488 (7th

⁵ At this time, among other matters, the Debtors have not addressed whether class certification would be appropriate as it would necessarily require fact intensive consideration. See In re Bally Total Fitness of Greater New York, Inc., 402 B.R. 616, 621 (Bankr. S.D.N.Y. 2009) (noting the Supreme Court's directive to district courts to conduct a "rigorous analysis" to determine whether the requirements of Civil Rule 23 have been met). However, in the event that the Court denies the Objection, the Debtors reserve their rights to object to the Claim on any grounds, including (without limitation) that the requirements of Civil Rule 23 have not been satisfied and the Debtors are not liable for the Claim.

Cir. 1988) ("the right to file a proof of claim on behalf of a class seems secure, at least if the bankruptcy judge elects to incorporate Rule 23 via Rule 7023 via Rule 9014." (emphasis added)).

23. Indeed, as the Bankruptcy Court for the Eastern District has stated, "although class proofs of claim may be permitted, they are not a matter of right." See In re Computer Learning Centers, Inc., 344 B.R. 79, 85-86 (Bankr. E.D. Va. 2006); see also In re American Reserve Corp., 840 F.2d at 494 (holding Federal Rule of Civil Procedure 23 governing class actions "may apply throughout a bankruptcy case at the bankruptcy judge's discretion"). Therefore, prior to filing a class proof of claim, a claimant must file a motion for determination of applicability of Bankruptcy Rule 7023. See Computer Learning, 344 B.R. at 86 ("The applicability of Rule 7023 is raised by motion."). Neither Gentry nor Class counsel ever made such a request.

24. Specifically, this Court set the General Bar Date by order dated December 10, 2008. D.I. 890. KCC served Class Counsel, Skaf, the Debtors employees

and many others with the Claims Bar Date Notice on December 19, 2008, and the General Bar Date passed over one year ago.⁶ Yet, to date, neither Skaf nor Class Counsel has moved for Court approval to file a class proof of claim. Consequently, Skaf and Class Counsel were simply not eligible to file a class proof of claim, and the portion of the Class Claim seeking payment on the Unnamed Claimants' Class Claim must be denied. See Computer Learning, 344 B.R. at 87 ("[W]ithout [a court order], Rule 7023 is not applicable to the proof of claim and a class proof of claim is improper."); see also White Motor Corp., 886 F.2d at 1470-71 (finding the bankruptcy court did not abuse discretion in denying a class proof of claim where the claimant "failed to timely petition the bankruptcy court to apply the provisions of Rules 9014 and 7023").

25. Accordingly, the Unnamed Claimants' Class Claims should be disallowed in their entirety and the Class Claim should be reduced to reflect only the Named

⁶ See Affidavit of Service of Evan Gershbein re: 1) Notice of Deadline for Filing Proofs of Claim and Proof of Claim Form [D.I. 966]; and 2) Notice of Commencement of Chapter 11 Bankruptcy Cases, Meeting of Creditors and Fixing of Certain Dates [D.I. 967], at p. 4332, (D.I. 1314).

Claimants' Claim, with the Debtors' rights to object to the Named Claimants' Claim on any additional grounds that governing law permits reserved.

B. Even If Skaf or Class Counsel Had Filed A Timely Motion Under Bankruptcy Rule 7023, The Dismissal Of Such Motion Would Have Been Proper.

26. Even if Skaf or Class Counsel had filed a motion seeking authorization to file a class proof of claim in these cases, the proper exercise of this Court's discretion would have dictated that the motion be denied.

27. In particular, in this jurisdiction, there are four considerations that are relevant to a court's determination as to whether to allow the filing of a class proof of claim. These considerations are: (i) whether the request to make Rule 7023 applicable to the filing of a proof of claim is timely; (ii) whether class adjudication is superior to the adjudication of individual claims in bankruptcy; (iii) whether a class proof of claim would unduly complicate or delay the administration of the bankruptcy case; and (iv) whether adjudication of the class proof of claims provides

benefits and limits the costs of claims litigation.

Computer Learning, 344 B.R. at 86 (citing American Reserve, 840 F.2d at 492-94; White Motor Corp., 886 F.2d at 1463-64).

28. In considering these factors, courts have recognized that certain aspects unique to bankruptcy law may make application of the class action rules unnecessary in that context. Computer Learning, 344 B.R. at 86 (citing American Reserve, 840 F.2d at 492-94). These aspects include the bankruptcy court's control over the debtor and its property, special notice of the bankruptcy proceedings, and the opportunity to file individual proofs of claim. Id. (citations omitted).

1. **Any request to file a class proof after the passing of the General Bar Date would have been untimely.**

29. While Bankruptcy Rule 9014 does not provide a deadline for filing a Bankruptcy Rule 7023 motion, it "should be filed as soon as practicable and should be denied if it comes so late as to prejudice any party." Computer Learning, 344 B.R. at 89 (emphasizing that early application of Rule 7023 "furtheres the policy

of an orderly and expeditious administration of the bankruptcy estate").

30. Neither Skaf nor Class Counsel has ever filed a motion for an order under Bankruptcy Rule 7023 for authorization to file the Class Claim. Moreover, even if Skaf or Class Counsel were to do so today, the Debtors and their creditors would be significantly prejudiced by permitting the filing and prosecution of the Class Claim this late into the administration of their chapter 11 cases. See Computer Learning, 344 B.R. at 90 (noting that the trustee was prejudiced by the delay in filing the Rule 7023 motion because he could have included the class action allegations in his analysis and settlement of claims and payments to creditors would be delayed indefinitely by the permission of a class proof of claim).

31. Specifically, this Court approved the Disclosure Statement on September 24, 2009. In formulating the disclosure statement, the Debtors did not include the Class Claim (or other similar claims filed by the same and different counsel) for purposes of determining the range of priority claims that would need

to be paid before general unsecured creditors. Indeed, the Debtors were only aware of one class claimant who sought and obtained permission to file a class proof of claim.⁷ Thus, if the Court permits Skaf or the Class Counsel to proceed on the Class Claim in the stated amount and as a priority claim, the classes of claims and projected distributions set forth in the Disclosure Statement might need to be revised. Plainly, that would delay the administration of the case and ultimate distribution to unsecured creditors, to whom distributions are made only after priority claims are paid in full. See Plan (D.I. 5124) ("Provided that the Face Amount of all Administrative Claims, Priority Claims and Miscellaneous Secured Claims have been paid in full . . . each Holder of an Allowed General Unsecured Claim shall receive its Pro Rata share . . .").

⁷ See D.I. 1683 (Stipulation and Order Granting Motion to Permit the Filing of a Class Proof of Claim by Christopher A. Jones of Whiteford, Taylor & Preston, LLP on Behalf of Daniel E. Weidler, Michael F. Yezback, Eloise Garcia, and Angie Duron). It is worth noting that Weidler's motion to file a class proof of claim was a matter of public record and was available on this Court's docket as of the date Skaf filed the Claim.

32. Even assuming, however, that permitting the filing of a class proof of claim at this stage of these cases would be timely, as discussed below, Skaf could not satisfy the remaining criteria.

2. Proceeding with the Class Claim is inferior to individual claim adjudication.

33. A bankruptcy court's analysis regarding whether to apply Bankruptcy Rule 7023 and allow the filing of a class proof of claim generally mirrors the analysis required in determining whether to certify a class under Civil Rule 23(b)(3): whether questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and whether a class action is superior to other available methods for the fair and efficient adjudication of the controversy. See Computer Learning, 344 B.R. at 91 (quoting Civil Rule 23(b)(3)). While the analysis under Bankruptcy Rule 7023 may be similar in concept, the bankruptcy court should consider and weigh the factors differently within the context of a bankruptcy because the class process may be inferior to the bankruptcy claims process. See In re Musicland

Holding Corp., 362 B.R. 644, 651 (Bankr. S.D.N.Y. 2007) (quoting In re Ephedra Prods. Liab. Litig., 329 B.R. 1, 5 (S.D.N.Y. 2005)) (“[B]ankruptcy significantly changes the balance of factors to be considered in determining whether to allow a class action and . . . class certification may be less desirable in bankruptcy than in ordinary civil litigation.” (internal quotations and citations omitted)). As one court aptly noted, “superiority of the class action vanishes when the ‘other available method’ is bankruptcy, which consolidates all claims in one forum and allows claimants to file proofs of claim without counsel and at virtually no cost.” See Ephedra, 329 B.R. at 9.

34. Indeed, as one court in this District recognized, Bankruptcy already provides the same, if not more, procedural advantages than class adjudication. See Computer Learning, 344 B.R. at 92 (explaining that “[a] bankruptcy case presents many of the same mechanisms to process large numbers of claims as a class action”). Specifically, bankruptcy provides (i) established mechanisms for notice, (ii) established mechanisms managing large numbers of claimants,

(iii) proceedings centralized in a single court with nationwide service of process, and (iv) protection against a race to judgment since all of the debtor's assets are under the control of the bankruptcy court. Id.; see also Musicland Holding Corp., 362 B.R. at 650-51, n. 8 (noting that bankruptcy provides more advantages than a class action and emphasizing the ease of participating in distributions from the bankruptcy estate and the fact that claims are "deemed allowed" under section 502(a) in the absence of an objection).

35. In this case, nearly 15,000 claims were filed against the Debtors. While the Class Claim and the Skaf Complaint do not provide the number of potential class members, even a few hundred or a thousand more claims would not have been difficult to process. See, e.g., Computer Learning, 344 B.R. at 94 (finding that the claimant's Rule 7023 motion would still have been denied if it was timely because the trustee could have easily reviewed 100 additional claims in a case where over 2,000 claims were filed).

36. Moreover, the Debtors provided actual and publication notice to their known and unknown creditors

and afforded them an opportunity to file a proof of claim. See, supra, at ¶ 24, n.6. If any Unnamed Claimant filed a claim for overtime or waiting time damages, such claim would be duplicative of the Unnamed Claimants' Class Claims. Consequently, that individual's claim would need to be adjudicated in the context of the claims administration process regardless of whether this Court authorized the filing of the Non-Skaf Class Claims.

37. More importantly, perhaps, this Court will need to address the Named Claimants' Claim and each Unnamed Claimant's Claim individually. Specifically, Skaf, Garcia, Perez, and each Unnamed Claimant are different and the facts underlying the Named Claimants alleged claims and each Unnamed Claimant's alleged claim are different. Indeed, none of the Named Claimants were employed after January, 2008, while other Unnamed Claimants may have been terminated prior to or after that date. Consequently, this Court will need to address each claimant's claim separately in the bankruptcy claim process.

3. **Permitting Skaf or the Class Counsel to proceed on the Unnamed Claimants' Class Claims would unduly complicate and delay the administration of these cases.**

38. Another reason for denying Skaf or the Class Counsel the right to proceed on the Class Claim in general and the Unnamed Claimants' Class Claims in particular is that doing so would unduly complicate and delay the administration of these cases. First, bar dates are important to the orderly administration of any bankruptcy proceeding for both the debtors and the creditors. See Computer Learning, 344 B.R. at 79 (noting that the bar date is important to the orderly administration of a case and prevents delays in distributing funds to creditors); In re Protected Vehicles, Inc., 397 B.R. 339, 346 (Bankr. D. S.C. 2008) (noting that a bar date is "necessary to provide finality in determining the identity of claimants and the liability faced by the bankruptcy estate"). "The requirement of a Bar Date in Chapter 11 enables the debtor . . . to establish the universe of claims with which it must deal and the amount of those claims." In

re A.H. Robins Co., 129 B.R. 457, 459 (Bankr. E.D. Va. 1991).

39. When a class proof of claim is properly requested and approved by the bankruptcy court, restricting the class to members who have, individually, timely filed their own proofs of claim preserves the orderly administration of a case provided by bar dates. See In re Protected Vehicles, Inc., 397 B.R. at 347 (finding that opening a class to include all employees regardless of whether a proof of claim was timely filed would "render proof of claim deadlines in bankruptcy cases meaningless"); In re Adam Aircraft Industries, Inc., 2009 WL 21000929 at *9 (Bankr. D. Colo. 2009) (denying a class proof of claim and stating that, "In the case at bar, the employees have already been afforded one bite at the claims apple, and Scoggin has not demonstrated a reason why they should receive a second."); In re Bill Heard Enterprises, Inc. 400 B.R. 795, 805 (Bankr. N.D. Ala. 2009) (stating that "[t]he Court further finds that the class is due to be restricted to those employees that file proofs of claim prior to the bar date . . .").

40. Here, however, the Debtors do not know whether any or all of the Unnamed Claimants filed proofs of claim before the General Bar Date. To the extent that they did not, but are now permitted to obtain a recovery through the Class Claim, the result would reduce the recovery, and therefore prejudice, the unsecured creditors that timely filed proofs of claim. This is especially true because the Class Claim is filed as a priority claim and, thus, would receive payment in full. Cf. In re Bally Total Fitness of Greater New York, Inc., 402 B.R. 616, 622 (Bankr. S.D.N.Y. 2009) (denying class proof of claim because, in part, "the de facto expansion of the [b]ar [d]ate for notified class members who failed to file individual claims in a timely manner will violate due process and prejudice the rights of timely filers").

41. Moreover, the claims administration process will be burdened with additional time consuming claim reconciliations on an individual basis for the Named Claimants and the Unnamed Claimants. Specifically, to the extent that the Unnamed Claimants were employed as of the Petition Date and received post-

petition payments on account of pre-petition priority claims, the claim administration process would be further complicated by calculating the amount each Unnamed Claimant would be entitled to as a priority claim under the Class Claim. This Court would need to reduce each Unnamed Claimant's portion of the Class Claim by the amount such Claimant has already received. Similarly, if an Unnamed Claimant filed a priority claim for amounts other than the damages sought in the Class Claim, this Court would also need to take such priority claim into consideration in reconciling the Class Claim. Undoubtedly, this process would be burdensome and time consuming.

42. Consequently, allowing a class proof of claim would unduly complicate and delay the administration of the Debtors cases.

4. The costs of litigating the Class Claim outweigh the benefits.

43. While class action lawsuits are often lauded for their ability to permit many people with small claims to seek redress where cost might otherwise be prohibitive as compared to the potential recovery,

such concerns are not persuasive when bankruptcy is the alternative method of adjudication. Ephedra, 329 B.R. at 9 ("superiority of the class action vanishes when the 'other available method' is bankruptcy . . ."). This is true because the bankruptcy "consolidates all claims in one forum and allows claimants to file proofs of claim without counsel and at virtually no cost." Id.

44. In evaluating the costs and benefits associated with allowing a class proof of claim, bankruptcy courts have significant discretion. See Ephedra, 329 B.R. at 10 (stating that "[t]he Court has discretion under Rule 9014 to find that the likely total benefit to the class members would not justify the cost to the estate of defending a class action under Rule 23."). Indeed, if resolving the class claim has the potential to interfere with distributions to creditors, that fact "itself presents sufficient grounds to expunge the class claims." Id. at 5.

45. Here, to resolve the Class Action the parties would need to engage in at least three stages of discovery -- first with respect to class certification, second with respect to the underlying liability, and

third with respect to damages. In addition, the parties would be compelled to address various procedural issues that are not common to traditional bankruptcy claim administration. In particular, the Debtors would be required to provide one or more additional notices to the members of any class certified. As a result, the Debtors limited assets would be depleted to the detriment of the Debtors' other creditors. See Bally Total Fitness, 402 B.R. at 621 (finding that class certification adds layers of procedural and factual complexity to a case, which can "siphon the Debtors' resources").

46. Furthermore, although one benefit of a class action may be deterring future conduct by the defendant, no such possible benefit is present in this case because the Debtors are no longer operating and are instead liquidating. See Ephedra, 329 B.R. at 9 ("Under the Bankruptcy Code, general deterrence is not promoted at the expense of creditors. Whatever weight deterrence may have in a true reorganization, it has none in a liquidating plan like the one here.").

47. Accordingly, for the reasons stated above, the Unnamed Claimants' Class Claims should be disallowed and only the Named Claimants' Claim should remain, subject to the Debtors right to object to such claim on any grounds governing law permits.

RESERVATION OF RIGHTS

48. At this time, the Debtors have not completed their review of the validity of all claims/expenses filed against their estates, including the Class Claim. The Debtors reserve the right to further object to any and all claims, whether or not the subject of the Objection, for allowance, voting, and/or distribution purposes, and on any grounds that bankruptcy or non-bankruptcy law permits. Furthermore, the Debtors reserve the right to modify, supplement and/or amend the Objection as it pertains to the Class Claim herein or to Skaf and file additional objections to the Class Claim and the Named Claimants' Claim, and nothing herein shall prejudice such rights.

NOTICE

49. Notice of this Objection has been provided to Skaf and to those parties entitled to notice

under the Supplemental Order Pursuant to Bankruptcy Code Sections 102 and 105, Bankruptcy Rules 2002 and 9007, and Local Bankruptcy Rules 2002-1 and 9013-1 Establishing Certain Notice, Case Management and Administrative Procedures (D.I. 6208; the "Case Management Order").

WAIVER OF MEMORANDUM OF LAW

50. Pursuant to Local Bankruptcy Rule 9013-1(G), and because there are no novel issues of law presented in the Objection, the Debtors request that the requirement that all motions be accompanied by a written memorandum of law be waived.

NO PRIOR RELIEF

51. No previous request for the relief sought herein has been made to this Court or any other court.

CONCLUSION

WHEREFORE, the Debtors request the Court to enter the Order sustaining the Objection and granting such other and further relief as the Court deems just and proper.

Dated: Richmond, Virginia SKADDEN, ARPS, SLATE, MEAGHER &
February 26, 2010 FLOM, LLP
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Counsel to the Debtors and
 Debtors in Possession

IN THE UNITED STATES BANKRUPTCY COURT
 FOR THE EASTERN DISTRICT OF VIRGINIA
 RICHMOND DIVISION

- - - - - X
 In re: : Chapter 11
 :
 CIRCUIT CITY STORES, INC., : Case No. 08-35653 (KRH)
 et al., :
 :
 Debtors. : Jointly Administered
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**ORDER PARTIALLY SUSTAINING THE DEBTORS THIRTY-FIRST
 OMNIBUS OBJECTION TO CLAIMS (DISALLOWANCE OF CERTAIN
 LEGAL CLAIMS), AS SUPPLEMENTED, WITH RESPECT TO THE
 CLASS CLAIM OF JOSEPH SKAF**

Upon consideration of the supplement to the
 Debtors' Thirty-First Omnibus Objection to Claims
 (Disallowance of Certain Legal Claims) (D.I. 4585) with
 respect to the Claim of Joseph Skaf (the "Supplement"),

attached as Exhibit B to the Supplement; and the Court having determined that the relief requested in the Supplement is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and it appearing that proper and adequate notice of the Objection and the Supplement has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

1. The Objection is SUSTAINED to the extent requested in the Supplement.
2. Claim number 8717 (the "Claim") is hereby modified from a class proof of claim to an individual proof of claim and reduced to \$636,674.40.
3. The Debtors right to object to any claim, including (without limitation) the Claim, on any grounds that governing law permits are not waived and are expressly reserved.

4. To the extent that this Order conflicts with the Order on the Debtors' Thirty-First Omnibus Objection (D.I. 5294), this Order shall control.

5. The Debtors shall serve a copy of this Order on Joseph Skaf on or before five (5) business days from the entry of this Order.

6. This Court shall retain jurisdiction with respect to all matters arising from or related to this Order.

Dated: Richmond, Virginia
_____, 2010

UNITED STATES BANKRUPTCY JUDGE

WE ASK FOR THIS:

Gregg M. Galardi, Esq.
Ian S. Fredericks, Esq.
SKADDEN, ARPS, SLATE, MEAGHER & FLOM, LLP
P.O. Box 636
Wilmington, Delaware 19899-0636
(302) 651-3000

- and -

Chris L. Dickerson, Esq.
SKADDEN, ARPS, SLATE, MEAGHER & FLOM, LLP
155 North Wacker Drive
Chicago, Illinois 60606
(312) 407-0700

- and -

/s/ Douglas M. Foley
Dion W. Hayes (VSB No. 34304)
Douglas M. Foley (VSB No. 34364)
MCGUIREWOODS LLP
One James Center
901 E. Cary Street
Richmond, Virginia 23219
(804) 775-1000

Counsel for Debtors and Debtors in Possession

CERTIFICATION OF ENDORSEMENT UNDER LOCAL RULE 9022-1(C)

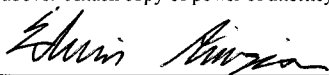
Pursuant to Local Bankruptcy Rule 9022-1(C), I hereby certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.

/s/ Douglas M. Foley
Douglas M. Foley

EXHIBIT A

(The Class Claim)

B 10 (Official Form 10) (12/08)

UNITED STATES BANKRUPTCY COURT Eastern District of Virginia		PROOF OF CLAIM
Name of Debtor: Circuit City Stores, Inc.		Case Number: 08-35653 KRH
<small>NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.</small>		
Name of Creditor (the person or other entity to whom the debtor owes money or property): Joseph Skaf and all those similarly situated		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim. Court Claim Number: <u>N/A</u> (If known) Filed on: _____
Name and address where notices should be sent: C/o The Aiwasian Law Firm, Edwin Aiwasian 330 Arden Avenue, Suite 205 Glendale, CA 91203 Telephone number: (818) 265-1020		
Name and address where payment should be sent (if different from above): C/o The Aiwasian Law Firm, Edwin Aiwasian 330 Arden Avenue, Suite 205 Glendale, CA 91203 Telephone number: (818) 265-1020		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check this box if you are the debtor or trustee in this case.
1. Amount of Claim as of Date Case Filed: \$ <u>95,501,550.00</u> If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete item 5. <input checked="" type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.		
2. Basis for Claim: <u>See Exhibit A attached.</u> (See instruction #2 on reverse side.)		5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount. Specify the priority of the claim. <input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B). <input checked="" type="checkbox"/> Wages, salaries, or commissions (up to \$10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. §507 (a)(4). <input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5). <input type="checkbox"/> Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8). <input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(____). Amount entitled to priority: \$ _____ <small>*Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small>
3. Last four digits of any number by which creditor identifies debtor: _____ 3a. Debtor may have scheduled account as: _____ (See instruction #3a on reverse side.)		
4. Secured Claim (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information. Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: Value of Property: \$ _____ Annual Interest Rate _____ % Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$ _____ Basis for perfection: _____ Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____		
6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim. 7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 7 and definition of "redacted" on reverse side.) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain:		
Date: 01/29/2009		Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any. 

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.



RECEIVED
JAN 30 2009
KURTZMAN CARSON CONSULTANTS

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

In re:)	Chapter 11
)	
CIRCUIT CITY STORES, INC. <u>et al.</u> ,)	
)	Case No. 08-35653
Debtors.)	Jointly Administered
)	
)	
)	

BASIS FOR CLAIM

On December 19, 2008, Joseph Skaf, Miguel Perez, and Gustavo Garcia filed a class action lawsuit against Circuit City Stores, Inc. in the Los Angeles Superior Court, Case No. BC 404195. This class action lawsuit is on behalf of all California-based salaried “Entertainment Managers,” “Technology Managers,” “Service & Installation Managers,” “Sales Managers,” and “Operations Managers” who worked at any time during the four years preceding the filing of the Complaint up until the date of final judgment at any of the stores in the State of California owned, operated, and/or acquired by Defendant Circuit City Stores, Inc.

Defendant employed Mr. Skaf as “Entertainment Manager” from approximately February 2002 to approximately March 2005, as “Technology Manager” from approximately March 2005 to approximately January 2006, and as “Sales Manager” from approximately January 2006 to approximately May 2007. Defendant employed Mr. Perez as “Service and Installation Manager” from approximately June 1998 to approximately January 2007 and as “Operations Manager” from approximately January 2007 to approximately January 2008. Defendant employed Mr. Garcia as “Service and Installation Manager” from approximately August 2000 to approximately June 2006.

The lawsuit alleges, among other things, the following: Defendant (1) failed to pay Mr. Skaf, and others similarly situated, overtime wages; (2) failed to provide Mr. Skaf, and

others similarly situated, meal and rest periods; (3) failed to timely pay their wages; (4) failed to furnish Mr. Skaf, and others similarly situated, complete and accurate wage statements; and (5) failed to reimburse Mr. Skaf, and others similarly situated, business-related expenses and costs.

The representative Plaintiffs' approximate ending salary was \$46,000 and they each worked 12-15 hour days, 6-7 days a week. To calculate the value of the Skaf vs. Circuit City, Inc. action, the following formula was used:

Overtime:

Hourly rate (\$22.11) x 1.5 (time and a half) = \$33.16
x Overtime hours of 30 hours per week = \$994.80
x Work weeks (208) = \$206,918.40
x Number of class members (350) = \$72,421,440.00

Waiting Time Penalties:

Hourly rate (\$22.11) x Hours per day (8) = \$176.88
x 30 days = \$5,306.40
x Number of employees employed at the California Circuit City Stores, Inc. stores (750)
= \$3,979,800.00

Attorneys Fees:

25% of Overtime and Waiting Time Totals = \$19,100,310.00

Overtime + Waiting Time Penalties + Attorneys Fees = \$95,501,550.00

EXHIBIT B

(The Skaf Complaint)

1 Edwin Aiwarzian (SBN 232943)
2 Ghazaleh Hekmatjah (SBN 259662)
3 **THE AIWAZIAN LAW FIRM**
4 330 Arden Avenue, Suite 205
5 Glendale, CA 91203
6 Telephone (818) 265-1020
7 Facsimile (818) 265-1021

8 *Attorneys for Plaintiffs and the Putative Class*

FILED
Los Angeles Superior Court

DEC 19 2008

John A. [Signature] Executive Officer/Clerk
By [Signature] Deputy
LORONNY SWAIN

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

12 JOSEPH SKAF; MIGUEL PEREZ; and
13 GUSTAVO GARCIA; individually and
14 on behalf of other members of the
15 general public similarly situated,

16 Plaintiff.

17 vs.

18 CIRCUIT CITY STORES, INC, a Virginia
19 corporation; and Does 1 through 100,
20 inclusive,

21 Defendants.

Case No.

BC404195

CLASS ACTION COMPLAINT

- (1) Violation of California Labor Code §§ 510 and 1198
- (2) Violation of California Labor Code §§ 226.7 and 512(a)
- (3) Violation of California Labor Code § 226.7
- (4) Violation of California Labor Code § 204
- (5) Violation of California Labor Code §§ 201 and 202
- (6) Violation of California Labor Code § 226(a)
- (7) Violation of California Labor Code § 1174(d)
- (8) Violation of California Labor Code §§ 2800 and 2802
- (9) Violation of California Business & Professions Code §§ 17200, et seq.
- (10) Declaratory Relief

CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

CIT/CAS: SC04176 LSA/REF: 1
RECEIPT #: 08418782807
DATE: 12/19/08 08:35:17 AM
PAID: 1520.00
RECEIVED: 0310

Case assigned 12/22/08 to Judge: Victoria Chanley

(11) Accounting

(12) Injunctive Relief

DEMAND FOR JURY TRIAL

COME NOW, Plaintiffs Joseph Skaf, Miguel Perez, and Gustavo Garcia, individually and on behalf of other members of the public similarly situated, and allege as follows:

PARTIES

1. Plaintiff Joseph Skaf ("Skaf") is an individual residing in the County of Los Angeles, State of California.
2. Plaintiff Miguel Perez ("Perez") is an individual residing in the County of Los Angeles, State of California.
3. Plaintiff Gustavo Garcia ("Garcia") is an individual residing in the County of Los Angeles, State of California.
4. Plaintiffs Skaf, Perez, and Garcia will hereinafter be collectively referred to as Plaintiffs.
5. Defendant Circuit City Stores, Inc. ("Circuit City"), at all time herein mentioned, was and is a Virginia corporation, with its corporate headquarters located at 9950 Mayland Drive, Richmond, Virginia 23233.
6. Circuit City and Does 1 through 100 will hereinafter be collectively referred to as Defendants.
7. Defendants own/owned and operate/operated an industry, business and establishment in over 100 separate geographic locations within the State of California, including within Los Angeles County, for the purpose of operating a retail store to sell goods.
8. The true names and capacities, whether corporate, associate, individual or otherwise, of defendants Does 1 through 100, inclusive, are unknown to Plaintiffs who sue said defendants by such fictitious names. Plaintiffs are informed and

1 believe, and based on that information and belief allege, that each of the
2 defendants designated as a Doe is legally responsible for the events and happenings
3 referred to in this complaint, and unlawfully caused the injuries and damages to
4 Plaintiffs and the other class members alleged in this complaint. Plaintiffs will seek
5 leave of court to amend this complaint to show the true names and capacities when
6 the same have been ascertained.

7 9. At all times herein relevant, Circuit City and Does 1 through 100, and each of them,
8 were the agents, partners, joint venturers, representatives, servants, employees,
9 successors-in-interest, co-conspirators and assigns, each of the other, and at all
10 times relevant hereto were acting within the course and scope of their authority as
11 such agents, partners, joint venturers, representatives, servants, employees,
12 successors, co-conspirators and assigns, and that all acts or omissions alleged herein
13 were duly committed with the ratification, knowledge, permission, encouragement,
14 authorization and consent of each defendant designated herein.

15 10. Circuit City and Does 1 through 100 will hereinafter be collectively referred to as
16 Defendants.

17 **FACTUAL ALLEGATIONS**

18 11. Defendants employed Skaf from approximately May 1998 to approximately May
19 2007.

20 12. Defendants employed Skaf as an "Entertainment Manager" from approximately
21 February 2002 to approximately March 2005.

22 13. Defendants employed Skaf as a "Technology Manager" from approximately March
23 2005 to approximately January 2006.

24 14. Defendants employed Skaf as a "Sales Manager" from approximately January 2006
25 to approximately May 2007.

26 15. Defendants employed Perez from approximately October 1996 to approximately
27 May 2007.
28

- 1 16. Defendants employed Perez as a "Service and Installation Manager or "Road Shop
2 Manager" from approximately June 1998 to approximately January 2007.
- 3 17. Defendants employed Perez as an "Operations Manager" from approximately
4 January 2007 to approximately January 2008.
- 5 18. Defendants employed Garcia from approximately February 2000 to approximately
6 June 2006.
- 7 19. Defendants employed Garcia as a "Service and Installation Manager" or "Road Shop
8 Manager" from approximately August 2000 to approximately June 2006.
- 9 20. Plaintiffs are informed and believe, and based thereon allege, that at all times
10 herein relevant, Defendants were advised by skilled lawyers and other
11 professionals, employees, advisors, and consultants highly knowledgeable about
12 California wage law, employment and personnel practices.
- 13 21. Plaintiffs are informed and believe, and based thereon allege, that at all times
14 herein relevant, without any justification, Defendants ignored the employment and
15 personnel policy changes proposed by skilled lawyers and other professionals,
16 employees, advisors, and consultants highly knowledgeable about California wage
17 law, employment and personnel practice.
- 18 22. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew
19 or should have known that Plaintiff and the other class members were entitled to
20 receive certain wages for overtime compensation and that they were not receiving
21 wages for overtime compensation.
- 22 23. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
23 or should have know that Plaintiff and the other class members were entitled to
24 receive all meal periods or payment of one additional hour of pay at Plaintiffs' and
25 the other class members' regular rate of pay when a meal period was missed.
- 26 24. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew
27 or should have know that Plaintiffs and the other class members were entitled to
28

- 1 receive all rest periods or payment of one additional hour of pay at Plaintiffs' and
2 the other class members' regular rate of pay when a rest period was missed.
- 3 25. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew
4 or should have know that Plaintiffs and the other class members were entitled to
5 receive all wages owed to them upon discharge or resignation.
- 6 26. Plaintiffs are informed and believes, and based thereon allege, that Defendants
7 knew or should have know that Plaintiffs and the other class members were entitled
8 to receive complete and accurate wage statements in accordance with California
9 law.
- 10 27. Plaintiff are informed and believe, and based thereon allege, that Defendants knew
11 or should have know that Plaintiffs and the other class members were entitled to
12 reimbursement of all necessary expenditures incurred by Plaintiffs and the other
13 class members in direct consequence of the discharge of their job duties or in direct
14 consequence of their obedience to the directions of the employer.
- 15 28. Plaintiff are informed and believe, and based thereon allege, that Defendants knew
16 or should have know that they had a duty to compensate Plaintiffs and the other
17 class members pursuant to California law, and that Defendants had the financial
18 ability to pay such compensation, but willfully, knowingly, and intentionally failed to
19 do so, and falsely represented to Plaintiffs and the other class members that they
20 were properly denied wages, all in order to increase Defendants' profits.
- 21 29. At all material times set forth herein, Defendants regularly and consistently failed to
22 pay overtime wages to Plaintiffs and the other class members.
- 23 30. At all material times set forth herein, Defendants regularly and consistently failed to
24 provide uninterrupted meal and rest periods to Plaintiffs and the other class
25 members.
- 26 31. At all material times set forth herein, Defendants regularly and consistently failed to
27 provide complete and accurate wage statement to Plaintiffs and the other class
28 members.

1 32. At all material times set forth herein, Defendants regularly and consistently failed to
2 pay Plaintiffs and the other class members all wages owed to them upon discharge
3 or resignation.

4 33. At all material times set forth herein, Defendants regularly and consistently failed to
5 reimburse Plaintiffs and the other class members for all necessary expenditures
6 incurred by Plaintiffs and the other class members in direct consequence of the
7 discharge of their job duties or in direct consequence of their obedience to the
8 directions of the employer.

9 **CLASS ACTION ALLEGATIONS**

10 34. Plaintiffs bring this action on their own behalf and on behalf of all other members of
11 the general public similarly situated, and thus, seek class certification under Code of
12 Civil Procedure § 382.

13 35. The proposed class consists of five subclasses, which are defined as follows:

14 Subclass One:

15 All current and former "Entertainment Managers," or persons with similar titles
16 and/or similar job duties, who worked for Circuit City in the State of California at any
17 time during the period from four years prior to the filing of this Complaint to final
18 judgment.

19 Subclass Two:

20 All current and former "Technology Managers," or persons with similar titles and/or
21 similar job duties, who worked for Circuit City in the State of California at any time
22 during the period from four years prior to the filing of this Complaint to final
23 judgment.

24 Subclass Three:

25 All current and former "Service & Installation Managers," (also referred to internally
26 as "Road Shop Managers") or persons with similar titles and/or similar job duties,
27 who worked for Circuit City in the State of California at any time during the period
28 from four years prior to the filing of this Complaint to final judgment.

1 Subclass Four:

2 All current and former "Sales Managers," or persons with similar titles and/or
3 similar job duties, who worked for Circuit City in the State of California at any time
4 during the period from four years prior to the filing of this Complaint to final
5 judgment.

6 Subclass Five:

7 All current and former "Operations Managers," or persons with similar titles and/or
8 similar job duties, who worked for Circuit City in the State of California at any time
9 during the period from four years prior to the filing of this Complaint to final
10 judgment.

11 36. Plaintiffs reserve the right to establish other subclasses as appropriate.

12 37. There class is ascertainable and there is a well-defined community of interest in the
13 litigation:

14 a. The class members are so numerous that joinder of all class members is not
15 impracticable. The membership of the entire class is unknown to Plaintiffs at this
16 time; however, the class is estimated to be substantially greater than four-hundred
17 (400) individuals and the identity of such membership is readily ascertainable by
18 inspection of Circuit City employment records.

19 b. Plaintiffs' claims are typical of all other class members' as demonstrated herein.
20 Plaintiffs will fairly and adequately protect the interests of the class members with
21 whom they have a well defined community of interest.

22 c. Plaintiffs will fairly and adequately protect the interests of each class member, with
23 whom they have a well-defined community of interest and typicality of claims, as
24 demonstrated herein. Plaintiffs have no interest that is antagonistic to the other
25 class members. Plaintiffs' attorneys, the proposed class counsel, are versed in the
26 rules governing class action discovery, certification, and settlement. Plaintiffs have
27 incurred, and during the pendency of this action will continue to incur, costs and
28

1 attorneys' fees, that have been, are, and will be necessarily expended for the
2 prosecution of this action for the substantial benefit of each class member.

3 d. A class action is superior to other available methods for the fair and efficient
4 adjudication of this litigation because individual joinder of all damages class
5 members is impractical. This case involves one large corporate employer (Circuit
6 City) and a large number of individual employees (Plaintiffs and the other class
7 members) with many relatively small claims with common issues of law and fact. If
8 each employee were required to file an individual lawsuit, the corporate employer
9 would necessarily gain an unconscionable advantage since it would be able to
10 exploit and overwhelm the limited resources of each individual class member with
11 its vastly superior financial and legal resources. Requiring each class member to
12 pursue an individual remedy would also discourage the assertion of lawful claims by
13 employees who would be disinclined to pursue an action against their present
14 and/or former employer for a justifiable fear of retaliation and permanent damage
15 to their careers at present and/or subsequent employment. Proof of a common
16 business practice or factual pattern, of which the named Plaintiffs experienced, that
17 is representative of the class mentioned herein, will establish the right of each class
18 member to recovery on the causes of action alleged herein. Class action will
19 achieve economies of time, effort, and expense as compared with separate lawsuits,
20 and avoid inconsistent outcomes because the same issues can be adjudicated in the
21 same manner for the entire class.

22 e. Public Policy Considerations: Employers of this great state violate employment and
23 labor laws every day. Current employees are often afraid to assert their rights out
24 of fear of direct or indirect retaliation. Former employees are fearful of bringing
25 actions because they believe their former employers can damage their future
26 endeavors through negative references and other means. Class actions provide the
27 class members who are not named in the complaint with a type of anonymity that
28 allows for the vindication of their rights.

- 1 38. There are common questions of law and fact as to the class members that
2 predominate over questions affecting only individual members. The following
3 common questions of law or fact, among others, exists as to the members of the
4 class:
- 5 a. Whether Defendants required Plaintiffs and the other class members to work over
6 eight (8) hours per day, over twelve (12) hours per day, and/or over forty (40) hour
7 per week and failed to pay the legally required overtime compensation to Plaintiffs
8 and the other class members;
- 9 b. Whether Defendants deprived Plaintiffs and the other class members of meal
10 periods or required Plaintiffs and the class members to work during meal periods
11 without compensation;
- 12 c. Whether Defendants failed to promptly pay all wages due to Plaintiffs and the other
13 class members upon their discharge or resignation;
- 14 d. Whether Defendants deprived Plaintiffs and the other class members of rest periods
15 or required Plaintiff and the class members to work during rest periods without
16 compensation;
- 17 e. Whether Defendants failed to pay all wages due to Plaintiffs and the other class
18 members within the required time upon their discharge or resignation;
- 19 f. Whether Defendants complied with wage reporting as required by the California
20 Labor Code; including but not limited to § 226;
- 21 g. Whether Defendants complied with the notice posting requirements under
22 California Labor Code § 207;
- 23 h. Whether Defendants failed to reimburse Plaintiffs and the other class members for
24 necessary business related expenses and costs.
- 25 i. Whether Defendants' conduct was willful or reckless;
- 26 j. Whether Defendants engaged in unfair business practices in violation of California
27 Business & Professions Code §§ 17200, et seq.; and
28

1 k. The appropriate amount of damages, restitution, and/or monetary penalties
2 resulting from Defendants' violation of California law.

3 **FIRST CAUSE OF ACTION**

4 **(Violation of California Labor Code § 510 and 1198)**

5 **(Against CIRCUIT CITY and DOES 1 through 100)**

6 39. Plaintiffs incorporates by reference the allegations contained in paragraphs 1
7 through 38, and each and every part thereof with the same force and effect as
8 though fully set forth herein.

9 40. Pursuant to California Labor Code § 1198 and the applicable Industrial Welfare
10 Commission ("IWC") Wage Order, it is unlawful to employ persons without
11 compensating them at a rate of pay either time-and-one-half or two-times that
12 person's regular rate of pay, depending on the number of hours worked by the
13 person on a daily or weekly basis.

14 41. Pursuant to California Labor Code § 1198, the maximum hours of work and the
15 standard conditions of labor fixed by the commission shall be the maximum hours
16 of work and the standard conditions of labor for employees. The employment of any
17 employee for longer hours than those fixed by the order or under conditions of
18 labor prohibited by the order is unlawful.

19 42. Pursuant to the applicable IWC Wage Order, Defendants are and were required to
20 pay Plaintiffs and the other class members at the rate of time-and-one-half for all
21 hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a
22 workweek.

23 43. The applicable IWC Wage Order further provides that Defendants are and were
24 required to pay Plaintiffs and the other class members overtime compensation at a
25 rate of two times her regular rate of pay for all hours worked in excess of twelve
26 (12) hours in a day.

27 44. Pursuant to California Labor Code § 510, any work in excess of eight hours in one
28 workday and any work in excess of 40 hours in any one workweek and the first eight

1 hours worked on the seventh day of work in any one workweek shall be
2 compensated at the rate of no less than one and one-half times the regular rate of
3 pay for an employee. Any work in excess of 12 hours in one day shall be
4 compensated at the rate of no less than twice the regular rate of pay for an
5 employee. In addition, any work in excess of eight hours on any seventh day of a
6 workweek shall be compensated at the rate of no less than twice the regular rate of
7 pay of an employee.

8 45. Pursuant to California Labor Code § 510, Plaintiffs and the other class members are
9 entitled to overtime compensation at one-and-one-half times the regular hourly
10 rate for hours worked in excess of eight (8) hours in a day or forty (40) hours in a
11 week or for the first eight (8) hours worked on the seventh day of work, and to
12 overtime compensation at twice the regular hourly rate for hours worked in excess
13 of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh
14 day of work.

15 46. During the relevant time period, Plaintiffs and the other class members regularly
16 and/or consistently worked in excess of eight (8) hours in a day.

17 47. During the relevant time period, Plaintiffs and the other class members regularly
18 and/or consistently worked in excess of twelve (12) hours in a day.

19 48. During the relevant time period, Plaintiffs and the other class members regularly
20 and/or consistently worked in excess of forty (40) hours in a week.

21 49. During the relevant time period, Defendants intentionally and willfully failed to pay
22 overtime wages owed to Plaintiffs and the other class members.

23 50. Defendants' failure to pay Plaintiffs and the other class members overtime
24 compensation, as required by California laws, violates the provisions of California
25 Labor Code §§ 510 and 1198, and is therefore unlawful.

26 51. Pursuant to California Labor Code § 1194(a), notwithstanding any agreement to
27 work for a lesser wage, any employee receiving less than the legal minimum wage
28 or the legal overtime compensation applicable to the employee is entitled to

1 recover in a civil action the unpaid balance of the full amount of this minimum wage
2 or overtime compensation, including interest thereon, reasonable attorney's fees,
3 and costs of suit.

4 52. Pursuant to California Labor Code § 1194, Plaintiffs and the other class members are
5 entitled to recover unpaid overtime compensation, as well as interest, costs, and
6 attorneys' fees.

7 53. Plaintiffs are informed and believe, and based thereon allege, that Defendants are
8 guilty of oppression, fraud, or malice, thereby warranting an award of punitive
9 damages against Defendants for the sake of example, and to punish Defendants and
10 deter others from engaging in similar misconduct.

11 **SECOND CAUSE OF ACTION**

12 **(Violation of California Labor Code §§ 226.7 and 512(a))**

13 **(Against CIRCUIT CITY and DOES 1 through 100)**

14 54. Plaintiffs incorporates by reference the allegations contained in paragraphs 1
15 through 53, and each and every part thereof with the same force and effect as
16 though fully set forth herein.

17 55. At all times herein mentioned, the Industrial Welfare Commission Order and
18 California Labor Code §§ 226.7 and 512(a) were applicable to Plaintiffs' and the
19 other class members' employment by Defendants.

20 56. Pursuant to California Labor Code § 226.7, no employer shall require any employee
21 to work during any meal or rest period mandated by an applicable order of the
22 Industrial Welfare Commission.

23 57. Pursuant to California Labor Code § 512(a), an employer may not employ an
24 employee for a work period of more than five hours per day without providing the
25 employee with a meal period of not less than 30 minutes, except that if the total
26 work period per day of the employee is no more than six hours, the meal period
27 may be waived by mutual consent of both the employer and employee.
28

1 58. Pursuant to California Labor Code § 512(a), an employer may not employ an
2 employee for a work period of more than 10 hours per day without providing the
3 employee with a second meal period of not less than 30 minutes, except that if the
4 total hours worked is no more than 12 hours, the second meal period may be
5 waived by mutual consent of the employer and the employee only if the first meal
6 period was not waived.

7 59. During the relevant time period, Plaintiffs and the other class members who were
8 scheduled to work for a period of time in excess of six (6) hours were required to
9 work for a period of time in excess of six (6) hours, and were required to work for
10 periods longer than five (5) hours without an uninterrupted meal period of not less
11 than thirty (30) minutes.

12 60. During the relevant time period, Plaintiffs and the other class members who were
13 scheduled to work in excess of ten (10) hours but not longer than twelve (12) hours,
14 and who did not waive their legally-mandated meal periods by mutual consent were
15 required to work in excess of ten (10) hours without receiving a second
16 uninterrupted meal period of not less than thirty (30) minutes.

17 61. During the relevant time period, Plaintiffs and the other class members were
18 scheduled to work for a period of time in excess of twelve (12) hours was required
19 to work for periods longer than ten (10) hours without a second uninterrupted meal
20 period of not less than thirty (30) minutes.

21 62. During the relevant time period, Defendants intentionally and willfully required
22 Plaintiffs and the other class members to work during meal periods and failed to pay
23 Plaintiffs and the other class members the full meal period premium for work
24 performed during meal periods.

25 63. Defendants' conduct violates applicable Industrial Welfare Commission Wage
26 Orders, and California Labor Code §§ 226.7 and 512(a).

27 64. Pursuant to California Labor Code § 226.7(b), Plaintiffs and the other class members
28 are entitled to recover from Defendants one additional hour of pay at the

1 employee's regular rate of compensation for each work day that the meal or rest
2 period is not provided.

3 65. Plaintiffs are informed and believe, and based thereon allege, that Defendants are
4 guilty of oppression, fraud, or malice, thereby warranting an award of punitive
5 damages against Defendants for the sake of example, and to punish Defendant and
6 deter others from engaging in similar misconduct.

7 **THIRD CAUSE OF ACTION**

8 **(Violation of California Labor Code §§ 226.7)**

9 **(Against CIRCUIT CITY and DOES 1 through 100)**

10 66. Plaintiffs incorporates by reference the allegations contained in paragraphs 1
11 through 65, and each and every part thereof with the same force and effect as
12 though fully set forth herein.

13 67. At all times herein set forth, the California Industrial Welfare Commission Order and
14 California Labor Code § 226.7 was applicable to Plaintiffs' and the other class
15 members' employment by Defendants.

16 68. Pursuant to California Labor Code § 226.7, no employer shall require an employee
17 to work during any rest period mandated by an applicable order of the California
18 Industrial Welfare Commission.

19 69. During the relevant time period, Defendants required Plaintiffs and the other class
20 members of the class to work in excess of four (4) hours without providing them a
21 second ten (10) minute rest period.

22 70. During the relevant time period, Defendants required Plaintiffs and the other class
23 members to work an additional four (4) hours without providing a second ten (10)
24 minute rest period.

25 71. During the relevant time period, Defendants willfully required Plaintiffs and the
26 other class members to work during rest periods and failed to pay Plaintiffs and the
27 other class members the full rest period premium for work performed during rest
28 periods.

- 1 72. Defendants' conduct violates applicable Industrial Welfare Commission Wage
2 Orders, and California Labor Code § 226.7.
- 3 73. Pursuant to California Labor Code § 226.7(b), Plaintiffs and the other class members
4 of the class are entitled to recover from Defendants one additional hour of pay at
5 the employees' regular hourly rate of compensation for each work day that the rest
6 period was not provided.
- 7 74. Plaintiffs are informed and believe, and based thereon allege, that Defendants are
8 guilty of oppression, fraud, or malice, thereby warranting an award of punitive
9 damages against Defendants for the sake of example, and to punish Defendants and
10 deter other from engaging in similar misconduct.

11 **FOURTH CAUSE OF ACTION**

12 (Violation of California Labor Code § 204)

13 (Against CIRCUIT CITY and DOES 1 through 100)

- 14 75. Plaintiffs incorporates by reference the allegations contained in paragraphs 1
15 through 74, and each and every part thereof with the same force and effect as
16 though fully set forth herein.
- 17 76. Pursuant to California Labor Code § 204(b)(1), all wages earned for labor in excess of
18 the normal work period shall be paid no later than the payday for the next regular
19 payroll period.
- 20 77. During the relevant time period, Defendants intentionally and willfully failed to pay
21 Plaintiffs and the other class members the overtime and/or regular wages due to
22 them, within any time period permissible under California Labor Code § 204.

23 **FIFTH CAUSE OF ACTION**

24 (Violation of California Labor Code §§ 201 and 202)

25 (Against CIRCUIT CITY and DOES 1 through 100)

- 26 78. Plaintiffs incorporates by reference the allegations contained in paragraphs 1
27 through 77, and each and every part thereof with the same force and effect as
28 though fully set forth herein.

1 79. Pursuant to California Labor Code §§ 201 and 202, if an employer discharges an
2 employee, the wages earned and unpaid at the time of discharge are due and
3 payable immediately, and if an employee quits his or her employment, his or her
4 wages shall become due and payable not later than seventy-two 72 hours
5 thereafter, unless the employee has given seventy-two 72 hours notice of his or her
6 intention to quit, in which case the employee is entitled to his or her wages at the
7 time of quitting.

8 80. During the relevant time period, Defendants intentionally and willfully failed to pay
9 Plaintiffs and the other class members their wages, earned and unpaid, within
10 seventy-two (72) hours of Plaintiff and the other class members leaving Defendants'
11 employ.

12 81. Defendants' failure to pay Plaintiffs and the other class members their wages,
13 earned and unpaid, within (72) hours of her leaving Defendants' employ, is in
14 violation of California Labor Code §§ 201 and 202.

15 82. Pursuant to California Labor Code § 203, if an employer willfully fails to pay, without
16 abatement or reduction, in accordance with §§ 201 and 202, any wages of an
17 employee who is discharged or who quits, the wages of the employee shall continue
18 as a penalty from the due date thereof at the same rate until paid or until an action
19 is commenced; but the wages shall not continue for more than 30 days.

20 83. Plaintiffs and the other class members are entitled to recover the statutory penalty
21 for each day they were not paid, at her regular hourly rate of pay, up to thirty (30)
22 days maximum pursuant to California Labor Code § 203.

23 **SIXTH CAUSE OF ACTION**

24 **(Violation of California Labor Code § 226(a))**

25 **(Against CIRCUIT CITY and DOES 1 through 100)**

26 84. Plaintiffs incorporates by reference the allegations contained in paragraphs 1
27 through 83, and each and every part thereof with the same force and effect as
28 though fully set forth herein.

- 1 85. Pursuant to California Labor Code § 226(a), every employer shall furnish each of his
2 or her employees an accurate itemized statement in writing showing (1) gross
3 wages earned; (2) total hours worked by the employee, (3) the number of piece-rate
4 units earned and any applicable piece rate if the employee is paid on a piece-rate
5 basis, (4) all deductions, provided that all deductions made on written orders of the
6 employee may be aggregated and shown as one item, (5) net wages earned, (6) the
7 inclusive dates of the period for which the employee is paid, (7) the name of the
8 employee and his or her social security number, (8) the name and address of the
9 legal entity that is the employer, and (9) all applicable hourly rates in effect during
10 the pay period and the corresponding number of hours worked at each hourly rate
11 by the employee. The deductions made from payments of wages shall be recorded
12 in ink or other indelible form, properly dated, showing the month, day, and year,
13 and a copy of the statement or a record of the deductions shall be kept on file by
14 the employer for at least three years at the place of employment or at a central
15 location within the State of California.
- 16 86. Defendants intentionally and willfully failed to provide Plaintiffs and the other class
17 members with complete and accurate wage statements. The deficiencies included
18 one or more of the following: the failure to include the total number of hours
19 worked by Plaintiffs and the other class members, the failure to include the hourly
20 rate, the failure to provide their social security numbers.
- 21 87. As a result of Defendants' violation of California Labor Code § 226(a), Plaintiffs and
22 the other class members have suffered injury and damage to their statutorily-
23 protected rights.
- 24 88. More specifically, Plaintiffs and the other class members have been injured by
25 Defendants' intentional and willful violation of California Labor Code § 226(a)
26 because they were denied both their legal right to receive, and their protected
27 interest in receiving, accurate and itemized wage statements pursuant to California
28 Labor Code § 226(a).

1 89. Plaintiffs and the other class members are entitled to recover from Defendants the
2 greater of their actual damages caused by Defendants' failure to comply with
3 California Labor Code § 226(a), or an aggregate penalty not exceeding four
4 thousand dollars per employee.

5 **SEVENTH CAUSE OF ACTION**

6 **(Violation of California Labor Code § 1174(d))**

7 **(Against CIRCUIT CITY and DOES 1 through 100)**

8 90. Plaintiffs incorporates by reference the allegations contained in paragraphs 1
9 through 89, and each and every part thereof with the same force and effect as
10 though fully set forth herein.

11 91. Pursuant to California Labor Code § 1174(d), an employer shall keep, at a central
12 location in the state or at the plants or establishments at which employees are
13 employed, payroll records showing the hours worked daily by and the wages paid
14 to, and the number of piece-rate units earned by and any applicable piece rate paid
15 to, employees employed at the respective plants or establishments. These records
16 shall be kept in accordance with rules established for this purpose by the
17 commission, but in any case shall be kept on file for not less than two years.

18 92. Defendants have intentionally and willfully failed to keep accurate and complete
19 payroll records showing the hours worked daily and the wages paid, to Plaintiffs and
20 the other class members.

21 93. As a result of Defendants' violation of California Labor Code § 1174(d), Plaintiffs and
22 the other class members have suffered injury and damage to their statutorily-
23 protected rights.

24 94. More specifically, Plaintiff and the other class members have been injured by
25 Defendants' intentional and willful violation of California Labor Code § 1174(d)
26 because they were denied both their legal right and protected interest, in having
27 available, accurate and complete payroll records pursuant to California Labor Code
28 § 1174(d).

EIGHT CAUSE OF ACTION

(Violation of California Labor Code §§ 2800 and 2802)

(Against CIRCUIT CITY and DOES 1 through 100)

95. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 94, and each and every part thereof with the same force and effect as though fully set forth herein.

96. Pursuant to California Labor Code § 2800, an employer shall in all cases indemnify his employee for losses caused by the employer's want of ordinary care.

97. Pursuant to California Labor Code § 2802(a), an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

98. Plaintiffs and the other class members incurred necessary business-related expenses and costs that were not fully reimbursed by Defendants, including and without limitations, travel costs, including mileage and gasoline, for required trips that resulted from their employment with Circuit City.

99. Defendants have intentionally and willfully failed to reimburse Plaintiffs and the class members for necessary business-related expenses and costs.

100. Plaintiffs and the other class members are entitled to recover from Defendants their business-related expenses and costs incurred during the course and scope of their employment, plus interest accrued from the date on which the employee incurred the necessary expenditures at the same rate as judgments in civil actions in the State of California.

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NINTH CAUSE OF ACTION

(Violation of California Business & Professions Code §§ 17200, et seq.)

(Against CIRCUIT CITY and DOES 1 through 100)

101. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 100, and each and every part thereof with the same force and effect as though fully set forth herein.

102. Defendants' conduct, as alleged in this complaint, has been, and continues to be, unfair, unlawful and harmful to Plaintiffs and the other class members, and Defendants' competitors. Accordingly, Plaintiffs and the other class members seek to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

103. Defendants' activities as alleged herein are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code §§ 17200, et seq.

104. A violation of California Business & Professions Code §§ 17200, et seq. may be predicated on the violation of any state or federal law. As described herein, Defendants violated California Labor Code §§ 201, 204, 207, 226(a), 226.7, 510, 1174(d) and 1198, 2800, and 2802.

105. As a result the herein described violations of California law, Defendants unlawfully gained an unfair advantage over other businesses.

106. Plaintiffs and the other class members have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged herein.

107. Pursuant to California Business & Professions Code §§ 17200, et seq., Plaintiffs and the other class members are entitled to restitution of the wages wrongfully withheld and retained by Defendants; a permanent injunction requiring Defendants to comply with California wage law, including but not limited to California Labor Code and applicable Wage Orders. In addition, Plaintiffs and the other class

1 members are entitled to an award of attorneys' fees and costs pursuant to
2 California Code of Civil Procedure § 1021.5 and other applicable laws.

3 **TENTH CAUSE OF ACTION**

4 **(Request for Declaratory Relief)**

5 **(Against CIRCUIT CITY and DOES 1 through 100)**

6 108. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
7 through 107, and each and every part thereof with the same force and effect as
8 though fully set forth herein.

9 109. Plaintiffs and the other class members seek entry of a declaratory judgment against
10 Defendants and in Plaintiffs' favor which declares Defendants' practices as
11 heretofore alleged to be unlawful, and which provided for recovery of all sums
12 determined by this Court to be owed by Defendants to Plaintiffs and the other class
13 members.

14 **ELEVENTH CAUSE OF ACTION**

15 **(Request for an Accounting)**

16 **(Against CIRCUIT CITY and DOES 1 through 100)**

17 110. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
18 through 109, and each and every part thereof with the same force and effect as
19 though fully set forth herein.

20 111. Plaintiffs and the other class members are owed wages which equal the sum of the
21 overtime compensation, and premium pay not paid by Defendants to Plaintiffs and
22 the other class members, statutory interest on such compensation, and each of
23 them, and waiting time penalties owed to members of the Plaintiff class whose
24 employment terminated.

25 112. Plaintiffs do not know the precise amount of compensation due to Plaintiffs and to
26 of the other class members. Upon information and belief, Plaintiffs allege that
27 Defendants, and each of them, possess records from which the amount of
28

1 compensation due and owing to each member of the Plaintiff class can be
2 determined.

3 113. Because Defendants alone possess records from which the amount of compensation
4 due and owing to each member of the Plaintiffs class, there is no adequate remedy
5 at law and an accounting is necessary.

6 **TWELFTH CAUSE OF ACTION**

7 **(Request for Injunctive Relief)**

8 **(Against CIRCUIT CITY and DOES 1 through 100)**

9 114. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
10 through 113, and each and every part thereof with the same force and effect as
11 though fully set forth herein.

12 115. Defendants have the policies heretofore alleged, and threaten to apply said policies,
13 to all class members who are currently employed by Defendants, including
14 Defendants' failure to pay overtime compensation in violation of Labor Code
15 § 1194, Defendants' failure to provide premium pay for meal and/or rest periods
16 worked in violation of Labor Code § 226.7, and Defendants' failure to pay
17 compensation at the time of termination in violation of Labor Code §§ 201-203.

18 116. Said class members have been injured and damaged and are threatened with
19 further injury and damage by Defendants' continuing unlawful refusal to pay all
20 overtime and premium pay owed. Plaintiffs and the other class members are
21 threatened with reasonably probable and immediate irreparable harm.

22 117. Defendants have acted, and threaten to act, on grounds generally applicable to said
23 members of the class, thereby making appropriate preliminary and permanent
24 injunctive relief enjoining Defendants and their agents from continuing the unlawful
25 practices heretofore alleged.

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2 **PRAYER FOR RELIEF**

3 WHEEFORE, Plaintiffs, individually and on behalf of all other members of
4 the general public similarly situated, pray for relief and judgment against Defendants,
5 jointly and severally, as follows:

6 Class Certification

- 7 1. That this action be certified as a class action;
8 2. That Plaintiffs be appointed as the representative of the class;
9 3. That counsel for Plaintiffs be appointed as class counsel;
10 4. That Defendants provide to class counsel, immediately upon its appointment, the
11 names and most current contact information (address and telephone numbers) of
12 all class members.

13 As to the First Cause of Action

- 14 5. For general unpaid wages at overtime wage rates and such general and special
15 damages as may be appropriate;
16 6. For pre-judgment interest on any unpaid overtime compensation commencing from
17 the date such amounts were due;
18 7. For the imposition of civil penalties and/or statutory penalties;
19 8. For punitive damages and/or exemplary damages according to proof at trial;
20 9. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
21 California Labor Code § 1194; and
22 10. For such other and further relief as the court may deem just and proper.

23 As to the Second Cause of Action

- 24 11. For all actual, consequential, and incidental losses and damages, according to proof;
25 12. For wages pursuant to California Labor Code § 226.7(b);
26 13. For the imposition of civil penalties and/or statutory penalties;
27 14. For punitive damages and/or exemplary damages according to proof at trial;
28 15. For reasonable attorneys' fees and costs of suit incurred herein; and
16. For such other and further relief as the court may deem just and proper.

As to the Third Cause of Action

17. For all actual, consequential, and incidental losses and damages, according to proof;
18. For wages pursuant to California Labor Code § 226.7(b);
19. For punitive damages and/or exemplary damages according to proof at trial;
20. For reasonable attorneys' fees and costs of suit incurred herein; and
21. For such other and further relief as the court may deem just and proper.

As to the Fourth Cause of Action

22. For actual, consequential and incidental losses and damages, according to proof;
23. For pre-judgment interest on any untimely paid compensation, from the date such amount were due;
24. For punitive damages and/or exemplary damages according to proof at trial;
25. For reasonable attorneys' fees and costs of suit incurred herein; and
26. For such other and further relief as the court may deem just and proper.

As to the Fifth Cause of Action

27. For actual, consequential and incidental losses and damages, according to proof;
28. For statutory penalties pursuant to California Labor Code § 203 for Plaintiff and all other class members who have left Defendants' employ;
29. For reasonable attorneys' fees and costs of suit incurred herein; and
30. For such other and further relief as the court may deem just and proper.

As to the Sixth Cause of Action

31. For actual, consequential and incidental losses and damages, according to proof;
32. For statutory penalties pursuant to California Labor Code §§ 226(e);
33. For injunctive relief to ensure compliance with this section, pursuant to California Labor Code § 226(g);
34. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code § 226(e); and
35. For such other and further relief as the court may deem just and proper.

1 As to the Seventh Cause of Action

- 2 36. For actual, consequential and incidental losses and damages, according to proof;
3 37. For statutory penalties pursuant to California Labor Code §§ 1174.5;
4 38. For punitive damages and/or exemplary damages according to proof at trial;
5 39. For reasonable attorneys' fees and costs of suit incurred herein; and
6 40. For such other and further relief as the court may deem just and proper.

7 As to the Eight Cause of Action

- 8 41. For actual, consequential and incidental losses and damages, according to proof;
9 42. For the imposition of civil penalties and/or statutory penalties;
10 43. For punitive damages and/or exemplary damages according to proof at trial;
11 44. For reasonable attorneys' fees and costs of suit incurred herein; and
12 45. For such other and further relief as the court may deem just and proper.

13 As to the Ninth Cause of Action

- 14 46. For restitution of unpaid wages to Plaintiff and the other class members and
15 pre-judgment interest from the day such amount were due and payable;
16 47. For the appointment of a receiver to receive, manage and distribute any and all
17 funds disgorged from Defendants and determined to have been wrongfully
18 acquired by Defendants as a result of violation of California Business & Professions
19 Code §§ 17200, et seq.;
20 48. For reasonable attorneys' fees and costs of suit incurred herein that Plaintiffs and
21 the other class members are entitled to recover under California Code of Civil
22 Procedure § 1021.5;
23 49. For injunctive relief to ensure compliance with this section, pursuant to California
24 Business & Professions Code § 17200, et seq.; and
25 50. For such other and further relief as the court may deem just and proper.

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As to the Tenth Cause of Action

51. For declaratory judgment;
52. For reasonable attorneys' fees and costs of suit incurred herein; and
53. For such other and further relief as the court may deem just and proper.

As to the Eleventh Cause of Action

54. For an accounting;
55. For reasonable attorneys' fees and costs of suit incurred herein; and
56. For such other and further relief as the court may deem just and proper.

As to the Twelfth Cause of Action

57. For preliminary and permanent injunctive relief;
58. For reasonable attorneys' fees and costs of suit incurred herein; and
59. For such other and further relief as the court may deem just and proper.

Dated: December 19, 2008

THE AIWAZIAN LAW FIRM

BY: 

Edwin Aiwazian

Attorneys for Plaintiffs and the Putative Class

DEMAND FOR JURY TRIAL

Plaintiffs, individually and on behalf of the members of the public similarly situated, hereby demand a trial by a jury.

Dated: December 19, 2008

THE AIWAZIAN LAW FIRM

BY:



Edwin Aiwazian

Attorneys for Plaintiffs and the Putative Class